



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties appeared. The only evidence filed by either party was a copy of the 10 Day Notice to End Tenancy dated September 2, 2015, which the tenant acknowledged that he had.

### Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, on what grounds?
- Is the landlord entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This month-to-month tenancy commenced September 1, 2014. The rental unit is a house that contains three rental units. The tenant rents the entire house for \$2000.00 a month, payable on the first day of the month. With the landlord's permission he sub-lets two of the rental units at a monthly rental of \$650.00 each. The tenant paid a security deposit of \$1000.00.

The landlord listed the property for sale and there were some disputes about arranging access to the rental units for showings. The tenant and the landlord's son had an argument on the telephone. The son told the tenant he wanted him to move out. The tenant asked if he was being evicted to which the son replied that he was. The tenant asked if this was his sixty day notice and the son replied that it was. Nothing was reduced to writing. The tenant thought a sixty day notice meant he did not have to pay rent for two months so did not pay any rent for September or October.

On September 2 the landlord issued and posted a 10 Day Notice to End Tenancy for Non-Payment of Rent.

The second page of the notice explains that a tenant who wishes to dispute the notice has five days in which to file an application for dispute resolution; sets out the grounds on which a notice may be disputed; and advises that a tenant who accepts, i.e. does not dispute, the notice must move out on or before the effective date of the notice.

The tenant did not file an application for dispute resolution disputing the notice.

The tenant collected rent from his tenants in September. One of the sub-tenants moved out at the end of September and the other paid his October rent - \$650.00 – directly to the landlord. The landlord testified that the arrears of rent to the end of October are \$3350.00.

### Analysis

Section 52 of the *Residential Tenancy Act* provides that in order to be effective a notice to end tenancy given by a landlord or a tenant must, among other things, be in writing and signed by the landlord or the tenant giving the notice. A face-to-face or telephone conversation, an e-mail or a text message is never a valid notice to end tenancy.

Even if the tenant had been given a valid 2 Month Notice to End Tenancy for Landlord's Use the tenant is only entitled to one month rent free (section 51).

The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Residential Tenancy Act* to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an order of possession effective two days after service on the tenant.

I find that the landlord has established a total monetary claim of \$3400.00 comprised of arrears of rent in the amount of \$3350.00 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the deposit of \$1000.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2400.00.

At the end of the hearing the landlord asked about the security deposit paid by the remaining sub-tenant to the tenant. As this was not part of the application before me it would be improper for me to make a decision on this issue. If the landlord and tenant are not able to come to some agreement on this question, they should call the information line of the Residential Tenancy Branch for further direction.

### Conclusion

- a. An order of possession effective two days after service on the tenant has been granted. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.
- b. A monetary order in favour of the landlord in the amount of \$2400.00 has been granted. If necessary, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 30, 2015

---

Residential Tenancy Branch

